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COMMISSION ON
JUDICIAL PERFORMANCE

STATE OF CALIFORNIA
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

INQUIRY CONCERNING JUDGE
JOHN A. TRICE,

No. 196

DECISION AND ORDER
IMPOSING PUBLIC CENSURE
PURSUANT TO STIPULATION
(Commission Rule 127)

I

INTRODUCTION AND SUMMARY

This disciplinary matter concerns Judge John A. Trice, a judge of the San Luis Obispo County Superior Court since 2003. On October 23, 2015, the commission filed its Notice of Formal Proceedings (Notice) against Judge Trice.

The Supreme Court appointed three special masters to hold an evidentiary hearing and to report to the commission. The masters are Hon. M. Kathleen Butz, Justice of the Court of Appeal, Third Appellate District; Hon. Anthony J. Mohr, Judge of the Los Angeles County Superior Court; and Hon. Stanford E. Reichert, Judge of the San Bernardino County Superior Court.¹ Prior to the masters holding an evidentiary hearing, however, Judge Trice and his counsel, Eugene G. Iredale, Esq., and the examiner for the

¹ On January 20, 2016, Judge Trice filed with the commission a "Suggestion for Recusal of Judge Anthony Mohr." On January 21, 2016, Judge Mohr filed an answer to Judge Trice's suggestion for recusal, and on January 25, 2016, filed a supplemental declaration. On January 22, 2016, Judge Trice filed a "Supplemental Memorandum in Support of Motion for Recusal." On January 22, 2016, the examiner filed a "Response to Respondent's Suggestion for Recusal of Judge Anthony Mohr." It was not necessary for the commission to make a determination on the judge's recusal motion, because the commission considered and accepted this Stipulation without the participation or involvement of the special masters, and the Stipulation resolves this matter without a hearing and without further involvement of the special masters. Subsequent to the filing of Judge Trice's "Suggestion for Recusal," Judge Mohr did not participate in any decisions or proceedings related to this matter, other than filing his answer and supplemental declaration in connection with respondent's motion to recuse.

commission, Gary W. Schons, Esq., (the parties) proposed a stipulated resolution of this inquiry to the commission, as follows.

By a Stipulation for Discipline by Consent (Stipulation), the parties proposed, pursuant to Commission Rule 127(b), that this inquiry concerning Judge Trice be resolved with the imposition of a public censure based upon the stipulated facts and legal conclusions. Judge Trice expressly admits the truth of the stipulated facts and agrees with the stipulated legal conclusions. According to the terms of the Stipulation, Judge Trice also agrees that in its decision and order imposing a public censure, the commission may articulate the reasons for its decision and include explanatory language the commission deems appropriate. Pursuant to the Stipulation, Judge Trice waives further proceedings and review in this matter, including formal proceedings (rule 118, et seq.) and review by the California Supreme Court (Cal. Rules of Court, rule 9.60).

Judge Trice also executed on January 22, 2016, the requisite Affidavit of Consent (Affidavit) under rule 127(d) in which he admits the truth of the charges as modified by the Stipulation, consents to the imposition of a public censure, and waives review by the California Supreme Court.

This Decision and Order imposing a public censure is issued following the commission's vote to accept the stipulated agreement. The findings and conclusions, set forth herein, are based on the Stipulation and Affidavit, which are attached to this decision.

II

STIPULATED FACTS AND LEGAL CONCLUSIONS

Judge John A. Trice became a judge of the San Luis Obispo County Superior Court in 2003, following his election to that office. His current term began in January 2015.

Count One A

In 1990, judgment was entered in the marital dissolution matter of *John A. Trice v. Dawna L. Trice*, No. DR17310. Pursuant to the judgment, which was drafted by the judge's counsel, Judge Trice, then an attorney, was ordered to pay his ex-wife her interest

in his future military retirement and pension benefits “as and when received.” A formula was provided to calculate the ex-wife’s share of the pension benefit ultimately awarded. This provision was also contained in a Marital Settlement Agreement (MSA), signed by Judge Trice, that was incorporated into the judgment. That provision provided as follows:

The Court specifically retains jurisdiction over Petitioner’s retirement benefits with the Un[ite]d States Air [F]orce and Petitioner is ordered to pay to Respondent her interest in the retirement and pension benefits as and when received on the following formula: Respondent’s interest equals one-half (1/2) times the gross monthly benefits times a fraction, the numerator of which is 3,402 points and the denominator of which is the total number of points accumulated by Petitioner in past and future service in the United States Air [F]orce and/or Reserve duty.

Dawna² was represented in the dissolution proceeding by attorney Patrick Perry, a certified family law specialist. In 2004, Perry was appointed as a commissioner by the San Luis Obispo County Superior Court, and continues to serve in that capacity. In 1990, after the divorce was final, Dawna remarried and moved to Arizona where she has maintained the same residence (and same telephone number) to the present.

In late 2011 or early 2012, Judge Trice recognized that he would be eligible to retire from the Air Force in June 2012 on his 60th birthday (June 14, 2012) and to then begin to receive his military pension benefits. He also recognized that the divorce judgment entitled his ex-wife to a specific portion of those benefits based on the formula provided in the judgment and MSA. (Judge Trice retained a copy of the judgment and MSA in his chambers.) Judge Trice also knew, and had records of, the precise number of points he had earned during his active and Reserve military service (4,082), which had ended in 2002 when he ceased his Reserve service.

² In order to avoid confusion, Judge Trice’s ex-wife and current wife, Mary Trice, are referred to, in this decision, by their first names.

In March 2012, Judge Trice received correspondence from the Air Force confirming his eligibility to retire and to begin to receive pension benefits in June. On March 26, 2012, he made application for his retirement benefits. In April 2012, Judge Trice received correspondence from the Air Force informing him that he would be placed on the Air Force Retired List, effective June 14, 2012, and that a pay account for his benefit was being established. The letter also provided an address and phone number for "any questions concerning retired pay." Judge Trice called the Air Force and advised an Air Force representative that his ex-wife had an interest in a portion of his pension benefits. Judge Trice was advised that in order for his ex-wife to receive direct payment from the Air Force, she would have to apply and provide certain documentation.

At about this time, Judge Trice recalls that he had a couple of informal conversations with his bench colleague Commissioner Perry, with whom he was on a friendly basis and with whom he would have lunch on a regular basis.

According to the judge, in both of these conversations, he posed hypothetical questions to Commissioner Perry concerning an ex-spouse's interest in his or her former spouse's military pension, where the military spouse had been promoted in rank after the divorce. The questions were posed as hypotheticals to avoid the conflict Commissioner Perry would have in advising the judge concerning his divorce from Dawna. One conversation concerned whether the ex-spouse's interest would be based on the military spouse's rank at the time of divorce, or at the time of retirement when the rank was higher. According to the judge, Commissioner Perry opined that it would be at the higher rank. The second conversation, according to the judge, concerned whether the military spouse was responsible for determining the amount the ex-spouse was entitled to where there had been a change in rank post-divorce, and whether the ex-spouse should be contacted. According to the judge, the commissioner opined that if the court had retained jurisdiction over the matter, it was up to the person who wished to modify the judgment to go back to court to obtain a subsequent order concerning the pension. According to the judge, he interpreted what the commissioner said to mean that if Dawna wanted her share of the pension, she could go back to court and get an order as to the specific amount

she was entitled to. Judge Trice recalls that the second conversation ended with either he or the commissioner making a “joke” to the effect that if the ex-spouse did not make a claim on the pension, the military spouse could keep the money. The judge recalls that either he or the commissioner responded, “No, can’t do that.”

On a day subsequent to these informal conversations, Judge Trice had a conversation with Commissioner Perry about his military pension benefits. Judge Trice was in his chambers when Commissioner Perry happened to walk by. Judge Trice called the commissioner into his chambers. Judge Trice had the judgment and MSA out on his desk as he was trying to determine his ex-wife’s share of the retirement benefits based on the formula provided in the judgment. According to Judge Trice, he told Commissioner Perry his final service points – 4,082 – and the commissioner, using the formula in the judgment, which included Dawna’s “share” of the judge’s points, and an estimate that Judge Trice provided of what his benefit amount would be based on his salary as a Lieutenant Colonel, calculated an estimate of Dawna’s share. According to the judge, the commissioner calculated that Dawna’s share was approximately 40 percent of the retirement benefit, that Judge Trice would retain approximately \$900 per month, and that Dawna was entitled to approximately \$700 per month.

In June 2012, Judge Trice became eligible to receive his monthly military retirement payments. That month he received correspondence from the Air Force which showed his gross retired pay (\$2,394), deductions for taxes and his current wife’s survivor benefit, and net pay (\$2,076.38). On July 2, Judge Trice received his first monthly benefit payment for the period June 14-30, 2012, in the gross amount of \$1,356.60, of which, after deduction for taxes, \$1,228.44 was directly deposited into a savings account Judge Trice had designated at the San Luis Obispo Credit Union (SLOCU). That account was in the names of the judge and his current wife Mary Trice (Mary). On August 1, Judge Trice received his first full month’s pension benefit – \$2,076.38 – which was directly deposited into this credit union account. Thereafter, he received this payment (or an adjusted amount) monthly.

Judge Trice claims that at the time he did not pay attention to that portion of the judgment which required him to pay his ex-wife her share of the pension benefits "as and when received," despite having the judgment readily at hand in his chambers, and having recently referred to that precise provision of the judgment in order to derive the payment formula for his ex-wife's share. Judge Trice admits he did not advise Dawna that he had retired from the Air Force and was receiving the pension benefit. He assumed she would be able to determine that fact from several close relatives she had in the military. The judge has stated that he told his adult son and daughter that he had retired from the Air Force. The judge admitted that he did not want to notify his ex-wife and then have to do the work to get her share of the benefit to her directly from the Air Force.

Judge Trice admits that he had the means and ability to contact his ex-wife. In addition, Judge Trice spent three days in Arizona in September 2013, when he attended their son's wedding ceremony. He interacted with Dawna on each of those days, including at the rehearsal dinner and wedding. At no time did he advise her that he was retired and receiving the pension benefits. The judge has stated that he relied on his belief that in 1990, Dawna had received a copy of a forensic accountant's report which set out the specific date of his eligibility for retirement benefits. Finally, Judge Trice had no knowledge that any of Dawna's family relations knew that she was entitled to receive a portion of his military retirement benefits. Instead of paying Dawna her share of the pension benefits "as and when received," each month, Judge Trice directed a transfer from his credit union savings account, into which he received the benefit payment directly from the Air Force, into a separate checking account at the credit union. For the months of August, September, and October 2012 he transferred \$700, the value of Dawna's share as estimated by Commissioner Perry, according to the judge, into the checking account. The checking account was owned solely by Judge Trice and Mary; it was not a trust account and Dawna was not named as a beneficiary of the account.

In September 2012, Judge Trice and Mary met with their financial advisor, Joan Parker, CFP. Judge Trice informed Parker that his ex-wife was entitled to a portion of his military retirement benefits, which he estimated was 30 percent of the benefit, and that he

was setting aside \$700 per month. The judge told Parker that his ex-wife had not claimed her share of his pension and that he was setting the money aside in a savings account in case she was to claim it at a later date. The judge said he assumed he would have to pay the money to his ex-wife or the government at some later date.

In a letter dated October 12, 2012, Parker advised Judge Trice that based on the information he had given her, he should set aside only \$440 as his ex-wife's (net) share because he was paying taxes on the entire pension benefit. On October 19, Judge Trice withdrew \$1,000 from the checking account (presumably to recover the "excess" payments into the account) and thereafter transferred \$440 monthly into that account.

On April 17, 2014, Commissioner Perry contacted Dawna by phone. He asked if she was aware that the judge had retired from the military and if she was receiving her share of his military pension. Dawna informed the commissioner that she did not know the judge had retired and that she had not been receiving her share of his pension payments.

On April 25, 2014, Commissioner Perry submitted a letter of complaint to the commission concerning the judge's failure to have paid Dawna her share of his military pension.

On May 1, 2014, a final deposit of \$440 was made into the SLOCU checking account (from the SLOCU savings account). As of that date, the balance in the checking account was \$9,895.

Commissioner Perry provided the names of two family law attorneys to Dawna. Dawna subsequently hired attorney Christopher Duenow. On May 21, 2014, Duenow contacted the judge by phone. Duenow told the judge that he was in violation of the divorce judgment because he had not paid Dawna her share of his military pension benefits for two years. The judge told Duenow words to the effect of, "I assumed she didn't want it because she didn't make a claim for it."

On May 22, 2014, Duenow met with the judge in chambers for almost an hour to discuss a resolution to the pension arrears issue. On May 23, Duenow had a telephone conference with the judge and Mary. The judge offered to settle for \$10,000. The judge

made a statement to Duenow wherein he stated that he failed to make the pension payments to Dawna on advice he claimed to have received from Commissioner Perry. (This matter is discussed further below.)

Later that day, Duenow sent the judge and Mary an email that included as an attachment a calculation of the amount owed to Dawna, \$22,769.17 (\$20,819 in principal and \$1,950.17 in interest).

On May 24, 2014, Dawna received an email from Mary, which stated:

Hi Dawna,

I want to share a little history with you.

Two years ago John was notified that he could receive retirement income from the service. He knew of your judgment/order and sought professional CPA and legal advice to figure out the percentage because it is a complicated calculation.

First he talked to Pat Perry, who said that since he no longer represented you, he could assist John in the calculation, which he did. He also specifically told John that it was not his responsibility to initiate the order and that it was yours. That advice was reiterated by the Air Force representative in Denver when John called them to start drawing his retirement. They indicated they needed a copy of the court order from you and could not make the calculation until you provided a W-4 and withholding information.

He then contacted our financial advisor, who did the calculation again and came up with a figure that he should set aside for you, which he did. That money has been waiting for you and has amounted to approximately \$9,800. We have paid state and federal taxes on the entire amount for the past two years, which further complicates the calculation. The figure that Duenow has come up with is about double what everyone advised John to set aside. He contacted our CPA again yesterday to re-run the numbers. There is obviously a mistake somewhere and if it is on John's side it will be corrected. There was absolutely no intention to defraud you.

I have chosen to write this email because I feel you and I have had a friendly relationship and I am upset that you probably think John has done something dishonest when he was following professional advice. I am also upset because I am assuming that when you called Pat Perry, he neglected to give you this history and probably just flippantly said something to the effect of "Oh, he's been drawing retirement for two years."

So there is John's side of the story.
I hope this helps and we can get back to where we were.

Mary

On June 9, 2014, the judge spoke with Parker by phone asking her to review Duenow's calculation of what the judge owed his ex-wife in arrears. The judge subsequently provided to Parker copies of pension statements for June 21, 2012, and June 20, 2013 through May 20, 2014, and a copy of the page from the MSA that contained the formula for dividing the pension. On the MSA page, the judge had handwritten in his service point total, 4,082.

On June 19, 2014, Parker wrote a letter to the judge and Mary wherein she provided her calculation of the amount owed to Dawna as of May 31, 2014, \$15,600. In arriving at this figure, Parker calculated the interest owed to Dawna using the daily interest rates for 52-week Treasury Bills rather than the legal interest rate of 10 percent. Further, Parker noted in the letter that if she had been aware that Dawna's share of the judge's pension was about 41.7 percent, as indicated by the formula in the MSA, "and not 30%" (as the judge had told her on September 26, 2012), she would have recommended that he set aside \$650 per month rather than \$440.

On July 10, 2014, Duenow sent the judge and Mary an email setting forth the terms of Dawna's final counteroffer. Dawna offered to settle her claim for \$20,000, which Duenow indicated was a discounted amount in consideration for the taxes the judge had paid on Dawna's share of the pension. Mary subsequently sent Duenow an

email stating that the judge could pay \$19,000 forthwith and \$1,750 in August. Duenow responded that the judge's offer was agreeable.

Thereafter, in July 2014, the judge, Dawna, and Duenow signed a stipulation addressing the pension arrears, Stipulation Re Payment of Military Benefits Pending Direct Distribution Order. The stipulation stated that the 1990 dissolution judgment "provided that John pay Dawna her interest in John's retirement benefits with the United States Air Force as and when received." The stipulation stated that "[t]o satisfy all arrears for non-payment of Dawn's [*sic*] interest in John's retirement benefits through June, 2014, John shall pay Dawna \$19,000 upon full execution of this stipulation." The stipulation further stated that John was to pay Dawna \$1,750 for July and August 2014, and then \$750 per month thereafter until Dawna began receiving direct payment of her share from the military.

In conjunction with the stipulation, the judge, Dawna, and Duenow also signed a Qualifying Court Order re: Military Retirement Benefits, the purpose of which was to allow Dawna to receive direct payment of her share from the military. This order provided that Dawna's share of the pension benefit was 44.6 percent (rather than 41.7 percent), because of the amount deducted from the gross pension amount to pay for a spousal survivor benefit for Mary.

The judge made the payments to Dawna that were required under the terms of the stipulation. Beginning on or about October 31, 2014, Dawna began receiving her share of the judge's military pension directly from the military.

Judge Trice's course of conduct with respect to complying with the provisions of the judgment requiring him to pay his ex-wife the designated portion of his military retirement benefits "as and when received on the following formula" demonstrated a disregard of the command of the judgment and his legal obligation to abide by it. Setting aside a rough approximation based on incomplete information of the ex-wife's share of the benefit in an account in the judge's name, and under his control, did not reflect a good faith effort to comply with the judgment. Additionally, the advice the judge received from the Air Force, and the opinions he recalls were expressed by Commissioner Perry in response

to his hypothetical questions were not based on the complete provision of the facts necessary to obtain a valid legal opinion upon which Judge Trice was entitled to rely.

The information the judge received from the Air Force related solely to an ex-spouse obtaining an order for the Air Force to pay the ex-spouse directly. This was not what the judgment provided for; rather, the judgment required the judge to pay his ex-wife "as and when" he received the benefits. Dawna did not need to apply to the Air Force in order to receive her share of the pension benefits; the judge was obligated to pay her directly under the terms of the judgment.

The opinions the judge asserts that Commissioner Perry expressed in response to his hypothetical questions did not justify the judge's course of conduct. In particular, under the terms of the divorce judgment, the judge's rank at the time of his military retirement was not relevant to the calculation of Dawna's share of his military pension, and there was no need for her to obtain a further court order to obtain her share. If the judge wished to seek a modification of the judgment due to promotions in rank he received post-divorce, then it was incumbent on him to seek a modification order from the court.

Further, the advice the judge received from the Air Force and the opinions he recalls were expressed by Commissioner Perry did not take into account that the judge did not advise his ex-wife he was retired and receiving retirement benefits. Without this information, the judge's ex-wife had no reason to affirmatively seek direct payment from the Air Force or a modification or enforcement order from the court.

The judge's ex-wife's interest in his military pension was not contingent on her requesting it; rather, she was an owner of her community share of the pension, with a present, existing, and equal interest. (See *Fithian v. Fithian* (1977) 74 Cal.App.3d 397, 403.)

The judge's failure to advise his ex-wife he was retired and receiving the pension benefit, given the terms of the judgment, violated his fiduciary duties to his ex-wife as set forth in Family Code sections 721 and 2102.

Judge Trice's failure to make the pension payments to his ex-wife, Dawna, for nearly two years, and his deliberate failure to inform her that he was retired and receiving his pension, constituted prejudicial misconduct. His conduct violated the Code of Judicial Ethics, canons 1 (a judge shall personally observe high standards of conduct so that the integrity of the judiciary will be preserved); 2 (a judge shall avoid impropriety and the appearance of impropriety); and 2A (a judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary).

Count One B

As discussed above, on May 23, 2014, the judge and Mary participated in a conference call with Dawna's attorney, Duenow, to discuss a resolution to the pension arrears issue. During the call, Judge Trice made a statement to the effect that the reason he had not made payments to Dawna is that Commissioner Perry had told him it was not his responsibility to initiate payments to her, and that it was Dawna's responsibility to initiate the process to obtain her share of his retirement benefit.

On or around July 15, after he had received and signed the Stipulation Re Payment of Military Benefits Pending Direct Distribution Order, Judge Trice met with Judge Barry LaBarbera in his chambers. Judge Trice informed Judge LaBarbera that he had signed a stipulation to pay pension benefit arrears to his ex-wife pursuant to their dissolution judgment and to arrange for future direct payment from the military. Judge Trice told Judge LaBarbera that he had not paid his ex-wife her share of the retirement benefits based on advice he had received from Commissioner Perry to the effect that it was not his responsibility to initiate payments to her, and that it was Dawna's responsibility to initiate the process to obtain her share of his retirement benefit. Judge Trice asked Judge LaBarbera if he would handle the stipulation by reviewing and signing it.

On Friday morning, July 18, 2014, Judge Trice called Court Executive Officer Susan Matherly on her cell phone. The purpose of the call was to make arrangements with Matherly to have the settlement stipulation given directly to Judge LaBarbera for judicial approval and his signing.

On July 21, 2014, Matherly spoke with the judge in chambers for about 30-45 minutes. The judge told Matherly that when he retired from the military he had talked to Commissioner Perry about what to do about his pension. The judge said he asked the commissioner, "Do I tell her? Give it to her?" or words to that effect. The judge said the commissioner told him, "You can put it in trust but can't cut her a check because you don't know what the withholdings are," and, "Don't spend it, put it in a trust and wait for her to ask for it," or words to that effect.

The statements the judge made to Duenow, Judge LaBarbera, and Matherly, which the judge attributed to Commissioner Perry, were untrue because they misstated Commissioner Perry's opinions, as described by the judge. Commissioner Perry never told the judge not to pay Dawna her share of the pension benefits. Nor did he tell the judge to put Dawna's share in a trust account and to wait for her to contact him. Dawna was the commissioner's former client, to whom he owed a continuing fiduciary obligation of loyalty and confidentiality. (*Oasis West Realty LLC v. Goldman* (2011) 51 Cal.4th 811, 821.)

The statements Judge Trice attributed to Commissioner Perry implied that Commissioner Perry had given him advice that was contrary to the interests of the commissioner's former client, and contrary to the terms of the Judgment of Dissolution and the MSA. By making these statements to Duenow, Judge LaBarbera, and Matherly, the judge was, intentionally or not, impugning the integrity of Commissioner Perry by asserting that he gave advice that was contrary to the interests of a former client, about the very matter he represented the former client in, and that was contrary to the terms of a court judgment.

Judge Trice's statements about advice he had received from Commissioner Perry constituted prejudicial misconduct. His conduct violated the Code of Judicial Ethics, canons 1, 2, and 2A. (See *Gonzalez v. Commission on Judicial Performance* (1983) 33 Cal.3d 359, 371 [judge's comments from the bench and in chambers impugning character and competence of judicial colleagues violated canon 2A]; *Censure of Judge Jose A.*

Velasquez (1997) p. 3 [judge's public statements disparaging judicial colleagues and local attorneys, made both on and off bench, constituted willful misconduct].)

Count One C

As previously discussed, on July 15, 2014, the judge signed two documents in connection with resolving the pension arrears issue with Dawna – a Stipulation Re Payment of Military Benefits Pending Direct Distribution Order, and a Qualifying Court Order re: Military Retirement Benefits. The terms of the stipulation are set forth above on page 10.

On July 15, Judge Trice called Duenow's office and spoke to Duenow's paralegal, Gina Goodwin. The judge informed Goodwin that he had signed the stipulation and that they would receive it shortly. The judge further stated that he had arranged for Judge LaBarbera to sign the stipulation, and that he wanted Duenow's office to submit it through CEO Matherly. The judge and Duenow had not previously discussed or agreed to this arrangement. On July 15, Goodwin prepared a memorandum to Duenow documenting her conversation with the judge, which states:

Judge Trice just called. He says he is going to be busy now, but relayed some info for me to pass along to you. [¶] He is concerned about submitting the document to the Court here. He thinks the Judges will start DQing themselves to keep from signing this doc. He has arranged for Judge LaBarbera to sign off on the document. He would like for us to submit it through Susan Matherly (court executive officer). She is on vacation until Monday. He has signed the doc and sent it back to us with a check for Dawna enclosed. We should receive it shortly.

During the chambers conference with Matherly on July 21, 2014, the judge told Matherly that he had called her on the previous Friday (July 18) because the parties were stipulating that Judge LaBarbera would sign the stipulation, and he wanted her to process the stipulation.

Matherly subsequently received the stipulation and order from Duenow's office and, pursuant to her conversation with Judge Trice, she left the documents on Judge LaBarbera's desk. Matherly did not discuss the documents with Judge LaBarbera.

On July 28, 2014, Judge LaBarbera signed the stipulation and order. The documents were then returned to Matherly and she had them filed with the court.

As a party to the proceeding, Judge Trice was without authority to determine who would handle the stipulation and order. Even as a judge, Judge Trice had no authority to assign the handling of the stipulation and order he entered into with Dawna to Judge LaBarbera. The authority to assign and reassign cases rests with the presiding judge. (Cal. Rules of Court, rule 10.603(b).) (In July 2014, Judge Dodie Harman was the presiding judge.) Further, Judge Trice was disqualified from presiding over the matter because he had a financial interest in the proceeding and was a party. (Code Civ. Proc., § 170.1(a)(3)(A) & (4).) A judge who is disqualified from a case may take certain limited actions in the case, but those actions do not include assigning the case to another judge. (See Code Civ. Proc., § 170.4(a).)

In selecting a particular judge to act on the stipulation, Judge Trice was acting beyond the limits of his lawful judicial power and he knew or should have known that he was acting beyond the limits of a judge's authority. In his conversation with Duenow's paralegal, Gina Goodwin, on July 15, 2014, the judge told Goodwin that he had arranged for Judge LaBarbera to sign the stipulation because he was "concerned" that if the document was submitted to the court, the court's judges would "start DQing themselves to keep from signing" it. In other words, Judge Trice was motivated by a desire to have the stipulation signed and to avoid the possibility of the court's judges disqualifying themselves *en masse*.

By directing who would be assigned to handle the stipulation and order, Judge Trice abused his authority, failed to uphold the integrity of the judiciary (canon 1), failed to avoid impropriety and the appearance of impropriety (canon 2), failed to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary (canon 2A), and used his judicial position to advance his personal interests

(canon 2B(2)). Moreover, because the judge was acting in his judicial capacity when he directed CEO Matherly to submit the stipulation and order to Judge LaBarbera his conduct constituted willful misconduct.

Count Two A

On May 1, 2013, Judge Harman, who was the assistant presiding judge and supervising judge of the criminal team, which included Judge Trice, was looking for Judge Trice to discuss coverage of the next day's calendars. Judge Harman learned from the judicial secretary that Judge Trice had left for the day.

At 5:12 p.m., Judge Harman sent an email to Judge Trice. Before sending the email she spoke with Judge LaBarbera, who was the presiding judge, about Judge Trice leaving the courthouse earlier that afternoon. Judge LaBarbera directed her to inquire about Judge Trice's whereabouts that afternoon, as was her duty as a supervising judge, and reviewed and approved the following email, which Judge Harman drafted. Judge Harman sent this email to Judge Trice at 5:12 p.m.:

I was trying to find you this afternoon to talk about tomorrow's calendars. I may need to get some help from you and wanted to see if you could help out. I was told you had left for the day so I was just wondering where you were because you did not check with me if we were covered before you left. If you could let me know where you were and if you are available to help with calendars tomorrow I would appreciate it.

Thanks, Dodie

That evening at 9:34 p.m., Judge Trice responded to Judge Harman with the following email, which he copied to the CEO, Matherly, and three of the court's judges, Judges LaBarbera, Charles Crandall, and Michael Duffy:

Dear Ms. Assistant Presiding Judge and Criminal Team
"Supervising Judge" –

As I told you last week, we have Veteran's Treatment Court meetings every Wednesday until kick-off on June 14th.

I can't help tomorrow.

I handled my calendar today, DIO's morning calendar today, DIOs 2960 calendar today with two court trials and 3 search warrants. Then I went to the Vet's Hall for the meeting, which turns out – he cancelled, so I talked with the V.A. rep for about an hour and came home. I just got done handling an after hours search warrant and a 20 page Pen Register Request. I'm sure you are just as busy with your physical therapy, workout time and all.

I don't appreciate you checking on me – I don't work for you and never will. I was elected by the citizens of this county, unlike you. I would hope you and your pals upstairs would have better things to do with your time as Superior Court Judges than keep a journal on another Judge's comings and goings.

Pathetic. . . . get a life. I look forward to running against you for P.J. The Court will be a lot better off without you in some position of assumed power. Good luck in the campaign.

Have a really nice night.

My civil attorneys say I should have no more contact with you or [Judge] Tangeman without an impartial witness or reporter present. I plan to take their advice.

Sincerely,

John A. Trice, Judge
San Luis Obispo Superior Court

As supervising judge of the criminal team, Judge Harman was responsible for ensuring that there was judicial coverage for all of the criminal court calendars. Consistent with that responsibility, Judge Harman's May 1, 2013 email to Judge Trice advised him that she had been looking for him that afternoon to talk about the next day's

calendars, asked where he had been that afternoon since he did not check with her before leaving, and asked if he would be available to help with the next day's calendars.

Judge Trice's email response to Judge Harman included comments that were disparaging ("I was elected by the citizens of our county, unlike you"), and comments that were undignified and discourteous ("Pathetic. . . . get a life," "The Court will be better off without you in some position of assumed power"). Judge Trice also implied that he would not speak to Judge Harman without a "witness or reporter" present.

Judge Trice's conduct violated canons 1, 2A, 3B(4), and 3C(2) (a judge shall cooperate with other judges and court officials in the administration of court business).

At a minimum, the judge's conduct constituted improper action.

Count Two B

The San Luis Obispo County Superior Court employs nine court reporters who work for the court under the supervision of Tammy Denchfield, Director of Court Operations. At a judges' meeting on October 3, 2014, the judges had agreed to continue a policy and practice that the nine court reporters would be randomly rotated and assigned to a judge for an eight-week period, this despite some of the judges complaining about having to work with court reporter Claire Trout.

On October 30, 2014, the court was scheduled for the next court reporter rotation (two months), effective November-December 2014. Tammy Denchfield was responsible for preparing the rotation and sending it out to the judges and court staff. Her office was sending the rotation out that afternoon.

Before sending the rotation schedule out, Denchfield addressed Judge Trice's request to keep court reporter Lisa Andrews, who was then assigned to his department, with Presiding Judge Harman. Judge Harman told Denchfield to do what she needed to do. Denchfield then directed Anna Hernandez, the supervising court reporter, to send the rotation out. Denchfield left for the day, around 4:30 p.m., her normal work schedule, and was starting a vacation leave the next day.

When Denchfield arrived home at 5:00 p.m. she received the following email from Judge Trice on her iPad:

Tammy – I was notified that Claire Trout has been re-assigned to our courtroom. I will not work with her. She has been rude to my other staff, the public and attorneys assigned to our court. We have several high profile, high stress cases coming up on our calendar, we cannot have such a person with us when trying to serve the public.

At 5:04 p.m., Denchfield forwarded the email to Susan Matherly.

At 5:05 p.m., Matherly forwarded the email to Judge Harman.

The next day, October 31, at 8:14 a.m., Judge Harman responded to Matherly by email:

Susan:

I believe rotations should be the same for everybody. The same issues have been raised by a number of judges. Bottom line is if she does something then it should be reported by him and dealt with by her supervisor.

None of us have been able to exclude a particular reporter from our courtroom. The problem should be dealt with if there is one instead of saying particular judges refuse particular reporters.

At 8:31 a.m., Matherly responded to Judge Trice by email, as follows:

The first thing you should realize is that this is a labor issue. The rotations are part of a labor agreement between the court and SEIU. I believe rotations should be the same for everybody. As you may recall, the same issues have been raised by a number of judges at our most recent judges' meeting and it was agreed that if she does something it should be reported to her supervisor so we can deal with the behavior. None of the judges have been able to exclude a particular reporter from their courtrooms. The problem should be dealt with if there is one instead of saying particular judges can refuse particular reporters. The process should be fair to both the other judges and the reporters. I am happy to sit down and discuss this with you at your convenience.

At 8:47 a.m. on October 31, Judge Trice responded to Matherly by email as follows:

I will not work with her. This has been a stressful year for Frances and I and we don't need to add more tension in our courtroom. If Chris Money, Barry [LaBarbera], Dodie [Harman] or Jeff Burke didn't want a bailiff or employee in their courtroom for a good reason, they were always moved. I will be given the same consideration. One male bailiff was moved completely out of this building a few years ago based on personal conflict with a female judge. Linda Hurst routinely refuses to accept certain personnel in her courtroom. I will be given the same consideration.

Our department has always gone the extra mile to help out this court. We have a "well-oiled", efficient department.

She either moves, or the P.J. can move me and my staff. I will not call my calendar on Tuesday with her in the courtroom. I will order her out of the room in public view.

If there is still resistance to this, I would like a special Judge's meeting to be scheduled before Tuesday.

At 9:28 a.m., Matherly sent the judge the following email:

I'm sorry but we cannot make an exception to the court reporter rotation policy.

At 9:36 a.m., the judge responded:

Please schedule a special Judge's meeting.

On November 1, 2014, the judge sent Matherly the following email:

I don't need a meeting. I'll suck it up for 8 weeks. [¶] Sorry for any stress this caused you.

Judge Trice may have had legitimate concerns about court reporter Trout, who had just been assigned to his courtroom. However, his concerns about Trout were based on conduct that had occurred in the past, and that predated the October 3, 2014 judges' meeting at which all of the judges agreed that Trout would be rotated through every department. Further, the assignment of courtroom staff is not a matter within the judge's

purview. Judge Trice's statement to CEO Matherly that he would refuse to call his calendar if Trout was in the courtroom, and to "order her out of the room in public view," was intemperate, and inconsistent with his obligation to cooperate with court officials in the administration of court business.

The judge's conduct violated canons 1, 2A, 3B(4), 3C(1) (a judge shall not, in the performance of administrative duties, engage in speech, gestures, or other conduct that would reasonably be perceived as bias or prejudice), and 3C(2).

At a minimum, the judge's conduct constituted improper action.

Count Three

Judge Trice and criminal defense attorney David Hurst are close personal friends. The judge and Hurst became friends while they were both employed by the San Luis Obispo County District Attorney's (DA) Office in the 1980's. While with the DA's office, they socialized often, including playing golf together and occasionally taking vacations together. Hurst left the DA's office in 1996 and went into private practice. Since then, Hurst and the judge have continued their friendship. Hurst considers the judge one of his four "best friends." Hurst has been to the judge's house at least 20 times. They watch sports events together and Hurst typically goes to the judge's house on Thanksgiving. They socialize together outside of work approximately once a month. In 2014, when Hurst was suffering from a knee injury that made it difficult for him to drive his manual transmission Porsche automobile, he traded cars with the judge's wife at her suggestion. While the trade was in place, the judge on approximately four occasions drove Hurst's Porsche to work and parked it in the judges' parking lot.

Since the judge took the bench in 2003, Hurst has frequently appeared in his court representing criminal defendants. The judge does not disqualify himself in cases in which Hurst appears as counsel of record, nor does he disclose on the record the fact or nature of his relationship with Hurst.

Judge Trice's position is that he is not disqualified from handling cases in which Hurst represents a defendant, and that he need not disclose his personal relationship with Hurst because the opposing representative in all of his criminal cases are 20-year veterans

of the DA's office who are aware of his relationship with Hurst, and who have never raised any concern of personal bias or prejudice, or the appearance of impropriety because of the relationship.

Under canon 3E(1), a judge is obligated to disqualify himself or herself in any proceeding in which disqualification is required by law. The circumstances under which a trial court judge is disqualified are set forth in Code of Civil Procedure section 170.1. Judge Trice's close friendship with Hurst would arguably appear to be a disqualifying circumstance under section 170.1(a)(6)(A)(iii), which provides that a judge shall be disqualified if "[a] person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial."

Even if the judge's friendship with Hurst did not require his disqualification, the judge nevertheless had an obligation to disclose their relationship on the record. Canon 3E(2)(a) provides that in all trial court proceedings, a judge shall disclose on the record "information that is reasonably relevant to the question of disqualification under Code of Civil Procedure section 170.1, even if the judge believes there is no actual basis for disqualification."

At a minimum, the judge's conduct violated canon 3E(2) and constituted improper action.

Prior Discipline

In 2012, Judge Trice received an advisory letter for continuing to preside over matters in a case after "voluntarily recusing" from a new trial motion.

Aggravating or Mitigating Factors

Judge Trice enlisted in the Air Force in 1972. He served eight years active duty, and thereafter 18 years in the Reserves. He was promoted to the rank of Lieutenant Colonel in 1997. He was awarded three Air Force Meritorious Service Medals during his military service.

Judge Trice worked for the San Luis Obispo County District Attorney's Office from 1984 through 2002. He was selected to serve as that office's first Felony Trial Team Leader in 1988. He handled over 140 jury trials and successfully prosecuted two

of the county's four death penalty cases. Additionally, he served on the Governor's Arson Task Force.

In 2003, he started the county's first Mental Health Treatment Court, and in 2013 started the county's first Veteran's Treatment Court.

Count Two A

Judge Trice acknowledges that his conduct in stating that he would not call his calendar, and would order the court reporter out of the room in public view was both improper and intemperate. In mitigation, the evidence shows that he relented and apologized less than 24 hours after the inappropriate email: "I don't need a meeting. I'll suck it up for 8 weeks. Sorry for any stress this caused you."

Count Three

Judge Trice believed that disclosure of his friendship with attorney Hurst was not required because the deputy district attorneys in his court had actual knowledge of his long friendship with Hurst. Upon reflection, Judge Trice now appreciates that a formal disclosure to all parties, including defendants, was the required course of conduct. He will make formal disclosure in the future.

III.

DISCIPLINE

The commission has determined to accept the Stipulation and impose this public censure, the most severe sanction that may be imposed short of removal, because it fulfills the commission's mandate to protect the public and maintain public confidence in the integrity of the judicial system while resolving this matter without the delay of further proceedings. (See *Broadman v. Commission on Judicial Performance* (1998) 18 Cal.4th 1079, 1111-1112; Cal. Const., art. VI, §18, subd. (d).)

Judge Trice's failure to comply with a court order that he make payments to his ex-wife "as and when" his military benefits were received is an affront to the authority and dignity of the judicial system he serves. It is a fundamental principle of our system of government that no person is above the law. (*Jenkins v. Knight* (1956) 46 Cal.2d 220, 223.) This principle is particularly important as applied to those who are sworn to uphold

the law. Our society depends upon our citizens' compliance with orders, decisions and judgements of our courts. That compliance, in turn, depends upon citizens' respect for the courts. When a judge fails to comply with a judgment or order of the court, public respect for the institution of the judiciary and the rule of law is undermined.

Judge Trice engaged in other misconduct that undermines public confidence in the integrity of the judiciary, including acting beyond his authority in directing what judge would be assigned to handle the stipulation and order in connection with the pension arrears owed to his ex-wife and attributing statements to Commissioner Perry that were untrue. The judge's misconduct related to his intemperate email exchanges with the supervising judge and the CEO were unprofessional and disparaging. A judge's failure to cooperate with supervising judges and court officials in a professional manner makes the demanding job of administering court business more difficult and stressful for those involved.

In determining that a public censure is the appropriate sanction, the commission has taken into consideration that Judge Trice acknowledged engaging in multiple incidents of misconduct as stated in the Stipulation, and that his history of prior discipline during his 13 years on the bench is limited to one advisory letter (the lowest level of discipline).

Commission members Hon. Erica R. Yew; Anthony P. Capozzi, Esq.; Ms. Patty A. Kasparian; Hon. Thomas M. Maddock; Dr. Michael A. Moodian; Nanci E. Nishimura, Esq.; Hon. Ignazio J. Ruvolo; Ms. Sandra Talcott; and Mr. Adam N. Torres voted to accept the parties' settlement proposal and to issue this decision and order imposing a public censure pursuant to the stipulated agreement. Commission member Ms. Mary Lou Aranguren voted to reject the Stipulation. Commission member Richard Simpson did not participate.

Dated: February 4, 2016



Hon. Erica R. Yew,
Chairperson

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COMMISSION ON
JUDICIAL PERFORMANCE

STATE OF CALIFORNIA
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

INQUIRY CONCERNING JUDGE
JOHN A. TRICE,

No. 196

STIPULATION FOR DISCIPLINE
BY CONSENT (Rule 127)

Pursuant to Rules of the Commission on Judicial Performance, rule 127, Judge John A. Trice, of the San Luis Obispo Superior Court, represented by counsel, Eugene Iredale, and the examiner, Gary W. Schons, ("the parties") submit this proposed disposition of Inquiry No. 196. The parties request that the commission resolve this matter by imposition of a censure.

The parties believe that the settlement provided by this agreement is in the best interests of the commission and Judge Trice because, among other reasons, in light of the stipulated facts and legal conclusions, a censure adequately protects the public and will avoid the delay and expense of further proceedings.

TERMS AND CONDITIONS OF AGREEMENT

1. This agreement resolves the matters alleged in the Inquiry Concerning Judge Trice, No. 196.
2. The commission shall issue a censure based on the agreed Stipulated Facts and Legal Conclusions set forth herein.
3. If the commission accepts this proposed disposition, the commission's decision and order imposing censure may articulate the reasons for its decision and include explanatory language that the commission deems appropriate.
4. Upon acceptance by the commission, this stipulation, the judge's affidavit of consent, and the commission's decision and order shall be made public.

5. Judge Trice waives any further proceedings and review in this matter, including formal proceedings (rules 118, et seq.) and review by the Supreme Court (Cal. Rules of Court, rule 9.60).

6. The commission may reject this proposed disposition and resume formal proceedings. If the commission does so, nothing in this proposed disposition will be deemed to be admitted by Judge Trice.

Accordingly, it is hereby stipulated and agreed that the commission shall issue a censure on the above Terms and Conditions of Agreement, and based on the following Stipulated Facts and Legal Conclusions:

STIPULATED FACTS AND LEGAL CONCLUSIONS

Judge John A. Trice became a judge of the San Luis Obispo County Superior Court in 2003, following his election to that office. His current term began in January 2015.

Count One A

In 1990, judgment was entered in the marital dissolution matter of *John A. Trice v. Dawna L. Trice*, No. DR17310. Pursuant to the judgment, which was drafted by the judge's counsel, Judge Trice, then an attorney, was ordered to pay his ex-wife her interest in his future military retirement and pension benefits "as and when received." A formula was provided to calculate the ex-wife's share of the pension benefit ultimately awarded. This provision was also contained in a Marital Settlement Agreement (MSA), signed by Judge Trice, that was incorporated into the judgment. That provision provided as follows:

The Court specifically retains jurisdiction over Petitioner's retirement benefits with the Un[it]ed States Air [F]orce and Petitioner is ordered to pay to Respondent her interest in the retirement and pension benefits as and when received on the following formula: Respondent's interest equals one-half (1/2) times the gross monthly benefits times a fraction, the numerator of which is 3,402 points and the denominator of which is the total number of points accumulated by Petitioner in past and future service in the United States Air [F]orce and/or Reserve duty.

Dawna was represented in the dissolution proceeding by attorney Patrick Perry, a certified family law specialist. In 2004, Perry was appointed as a commissioner by the San Luis Obispo County Superior Court, and continues to serve in that capacity. In 1990, after the divorce was final, Dawna remarried and moved to Arizona where she has maintained the same residence (and same telephone number) to the present.

In late 2011 or early 2012, Judge Trice recognized that he would be eligible to retire from the Air Force in June 2012 on his 60th birthday (June 14, 2012) and to then begin to receive his military pension benefits. He also recognized that the divorce judgment entitled his ex-wife to a specific portion of those benefits based on the formula provided in the judgment and Marital Settlement Agreement. (Judge Trice retained a copy of the judgment and Marital Settlement Agreement in his chambers.) Judge Trice also knew, and had records of, the precise number of points he had earned during his active and Reserve military service (4,082), which had ended in 2002 when he ceased his Reserve service.

In March 2012, Judge Trice received correspondence from the Air Force confirming his eligibility to retire and to begin to receive pension benefits in June. On March 26, 2012, he made application for his retirement benefits. In April, 2012, Judge Trice received correspondence from the Air Force informing him that he would be placed on the Air Force Retired List, effective June 14, 2012, and that a pay account for his benefit was being established. The letter also provided an address and phone number for "any questions concerning retired pay." Judge Trice called the Air Force and advised an Air Force representative that his ex-wife had an interest in a portion of his pension benefits. Judge Trice was advised that in order for his ex-wife to receive direct payment from the Air Force, she would have to apply and provide certain documentation.

At about this time, Judge Trice recalls that he had a couple of informal conversations with his bench colleague Commissioner Perry, with whom he was on a friendly basis and with whom he would have lunch on a regular basis.

According to the judge, in both of these conversations, he posed hypothetical questions to Commissioner Perry concerning an ex-spouse's interest in his or her former spouse's military pension, where the military spouse had been promoted in rank after the divorce. The questions were posed as hypotheticals to avoid the conflict Commissioner Perry would have in advising the judge concerning his divorce from Dawna. One conversation concerned whether the ex-spouse's interest would be based on the military spouse's rank at the time of divorce, or at the time of retirement when the rank was higher. According to the judge, Commissioner Perry opined that it would be at the higher rank. The second conversation, according to the judge, concerned whether the military spouse was responsible for determining the amount the ex-spouse was entitled to where there had been a change in rank post-divorce, and whether the ex-spouse should be contacted. According to the judge, the commissioner opined that if the court had retained jurisdiction over the matter, it was up to the person who wished to modify the judgment to go back to court to obtain a subsequent order concerning the pension. According to the judge, he interpreted what the commissioner said to mean that if Dawna wanted her share of the pension, she could go back to court and get an order as to the specific amount she was entitled to. Judge Trice recalls that the second conversation ended with either he or the commissioner making a "joke" to the effect that if the ex-spouse did not make a claim on the pension, the military spouse could keep the money. The judge recalls that either he or the commissioner responded, "No, can't do that."

On a day subsequent to these informal conversations, Judge Trice had a conversation with Commissioner Perry about his military pension benefits. Judge Trice was in his chambers when Commissioner Perry happened to walk by. Judge Trice called Commissioner Perry into his chambers. Judge Trice had the judgment and Marital Settlement Agreement out on his desk as he was trying to determine his ex-wife's share of the retirement benefits based on the formula provided in the judgment. According to Judge Trice, he told Commissioner Perry his final service

points – 4,082 – and the commissioner, using the formula in the judgment, which included Dawna’s “share” of the judge’s points, and an estimate that Judge Trice provided of what his benefit amount would be based on his salary as a Lt. Colonel, calculated an estimate of Dawna’s share. According to the judge, the commissioner calculated that Dawna’s share was approximately 40% of the retirement benefit, that Judge Trice would retain approximately \$900 per month, and that Dawna was entitled to approximately \$700 per month.

In June 2012, Judge Trice became eligible to receive his monthly military retirement payments. That month he received correspondence from the Air Force which showed his gross retired pay (\$2,394), deductions for taxes and his current wife’s survivor benefit, and net pay (\$2,076.38). On July 2, Judge Trice received his first monthly benefit payment for the period June 14-30, 2012, in the gross amount of \$1,356.60, of which, after deduction for taxes, \$1,228.44 was directly deposited into a savings account Judge Trice had designated at the San Luis Obispo Credit Union (SLOCU). That account was in the names of the judge and his current wife Mary Trice. On August 1, Judge Trice received his first full month’s pension benefit – \$2,076.38 – which was directly deposited into this credit union account. Thereafter, he received this payment (or an adjusted amount) monthly.

Judge Trice claims that at the time he did not pay attention to that portion of the judgment which required him to pay his ex-wife her share of the pension benefits “as and when received,” despite having the judgment readily at hand in his chambers, and having recently referred to that precise provision of the judgment in order to derive the payment formula for his ex-wife’s share. Judge Trice admits he did not advise Dawna that he had retired from the Air Force and was receiving the pension benefit. He assumed she would be able to determine that fact from several close relatives she had in the military. The judge has stated that he told his adult son and daughter that he had retired from the Air Force. The

judge admitted that he did not want to notify his ex-wife and then have to do the work to get her share of the benefit to her directly from the Air Force.

Judge Trice admits that he had the means and ability to contact his ex-wife. In addition, Judge Trice spent three days in Arizona in September 2013, when he attended their son's wedding ceremony. He interacted with Dawna on each of those days, including at the rehearsal dinner and wedding. At no time did he advise her he was retired and receiving the pension benefits. The judge has stated that he relied on his belief that in 1990, Dawna had received a copy of a forensic accountant's report which set out the specific date of his eligibility for retirement benefits. Finally, Judge Trice had no knowledge that any of Dawna's family relations knew that she was entitled to receive a portion of his military retirement benefits. Instead of paying Dawna her share of the pension benefits "as and when received," each month, Judge Trice directed a transfer from his credit union savings account, into which he received the benefit payment directly from the Air Force, into a separate checking account at the credit union. For the months of August, September, and October 2012 he transferred \$700, the value of Dawna's share as estimated by Commissioner Perry, according to the judge, into the checking account. The checking account was owned solely by Judge Trice and Mary; it was not a trust account and Dawna was not named as a beneficiary of the account.

In September 2012, Judge Trice and Mary met with their financial advisor, Joan Parker, CFP. Judge Trice informed Parker that his ex-wife was entitled to a portion of his military retirement benefit, which he estimated was 30% of the benefit, and that he was setting aside \$700 per month. The judge told Parker that his ex-wife had not claimed her share of his pension and that he was setting the money aside in a savings account in case she was to claim it at a later date. The judge said he assumed he would have to pay the money to his ex-wife or the government at some later date.

In a letter dated October 12, 2012, Parker advised Judge Trice that based on the information he had given her, he should set aside only \$440 as his ex-wife's (net) share because he was paying taxes on the entire pension benefit. On October 19, Judge Trice withdrew \$1,000 from the checking account (presumably to recover the "excess" payments into the account) and thereafter transferred \$440 monthly into that account.

On April 17, 2014, Commissioner Perry contacted Dawna by phone. He asked if she was aware that the judge had retired from the military and if she was receiving her share of his military pension. Dawna informed the commissioner that she did not know the judge had retired and that she had not been receiving her share of his pension payments.

On April 25, 2014, Commissioner Perry submitted a letter of complaint to the commission concerning the judge's failure to have paid Dawna her share of his pension.

On May 1, 2014, a final deposit of \$440 was made into the SLOCU checking account (from the SLOCU savings account). As of that date, the balance in the checking account was \$9,895.

Commissioner Perry provided the names of two family law attorneys to Dawna. Dawna subsequently hired attorney Christopher Duenow. On May 21, 2014, Duenow contacted the judge by phone. Duenow told the judge that he was in violation of the divorce judgment because he had not paid Dawna her share of his military pension benefits for two years. The judge told Duenow words to the effect of, "I assumed she didn't want it because she didn't make a claim for it."

On May 22, 2014, Duenow met with the judge in chambers for almost an hour to discuss a resolution to the pension arrears issue. On May 23, Duenow had a telephone conference with the judge and Mary Trice. The judge offered to settle for \$10,000. The judge made a statement to Duenow wherein he stated that he failed to make the pension payments to Dawna on advice he claimed to have received from Commissioner Perry. (This matter is discussed further below.)

Later that day, Duenow sent the judge and Mary an email that included as an attachment a calculation of the amount owed to Dawna, \$22,769.17 (\$20,819 in principal and \$1,950.17 in interest).

On May 24, 2014, Dawna received an email from Mary Trice, which stated:

Hi Dawna,

I want to share a little history with you.

Two years ago John was notified that he could receive retirement income from the service. He knew of your judgment/order and sought professional CPA and legal advice to figure out the percentage because it is a complicated calculation.

First he talked to Pat Perry, who said that since he no longer represented you, he could assist John in the calculation, which he did. He also specifically told John that it was not his responsibility to initiate the order and that it was yours. That advice was reiterated by the Air Force representative in Denver when John called them to start drawing his retirement. They indicated they needed a copy of the court order from you and could not make the calculation until you provided a W-4 and withholding information.

He then contacted our financial advisor, who did the calculation again and came up with a figure that he should set aside for you, which he did. That money has been waiting for you and has amounted to approximately \$9,800. We have paid state and federal taxes on the entire amount for the past two years, which further complicates the calculation. The figure that Duenow has come up with is about double what everyone advised John to set aside. He contacted our CPA again yesterday to re-run the numbers. There is obviously a mistake somewhere and if it is on John's side it will be corrected. There was absolutely no intention to defraud you.

I have chosen to write this email because I feel you and I have had a friendly relationship and I am upset that you probably think John has done something dishonest when he was following professional advice. I am also upset because I am assuming that when you called Pat Perry, he neglected to give you this history and probably just flippantly said something to the effect of "Oh, he's been drawing retirement for two years."

So there is John's side of the story.
I hope this helps and we can get back to where we were.

Mary

On June 9, 2014, the judge spoke with Parker by phone asking her to review Duenow's calculation of what the judge owed his ex-wife in arrears. The judge subsequently provided to Parker copies of pension statements for June 21, 2012, and June 20, 2013 through May 20, 2014, and a copy of the page from the MSA that contained the formula for dividing the pension. On the MSA page, the judge had handwritten in his service point total, 4,082.

On June 19, 2014, Parker wrote a letter to the judge and Mary wherein she provided her calculation of the amount owed to Dawna as of May 31, 2014, \$15,600. In arriving at this figure, Parker calculated the interest owed to Dawna using the daily interest rates for 52-week Treasury Bills rather than the legal interest rate of 10 percent. Further, Parker noted in the letter that if she had been aware that Dawna's share of the judge's pension was about 41.7 percent, as indicated by the formula in the MSA, "and not 30%" (as the judge had told her on September 26, 2012), she would have recommended that he set aside \$650 per month rather than \$440.

On July 10, 2014, Duenow sent the judge and Mary an email setting forth the terms of Dawna's final counteroffer. Dawna offered to settle her claim for \$20,000, which Duenow indicated was a discounted amount in consideration for

the taxes the judge had paid on Dawna's share of the pension. Mary Trice subsequently sent Duenow an email stating that the judge could pay \$19,000 forthwith and \$1,750 in August. Duenow responded that the judge's offer was agreeable.

Thereafter, in July 2014, the judge, Dawna, and Duenow signed a stipulation addressing the pension arrears, Stipulation Re Payment of Military Benefits Pending Direct Distribution Order. The stipulation stated that the 1990 dissolution judgment "provided that John pay Dawna her interest in John's retirement benefits with the United States Air Force as and when received." The stipulation stated that "[t]o satisfy all arrears for non-payment of Dawn's [sic] interest in John's retirement benefits through June, 2014, John shall pay Dawna \$19,000 upon full execution of this stipulation." The stipulation further stated that John was to pay Dawna \$1,750 for July and August 2014, and then \$750 per month thereafter until Dawna began receiving direct payment of her share from the military.

In conjunction with the stipulation, the judge, Dawna, and Duenow also signed a Qualifying Court Order re: Military Retirement Benefits, the purpose of which was to allow Dawna to receive direct payment of her share from the military. This order provided that Dawna's share of the pension benefit was 44.6% (rather than 41.7%), because of the amount deducted from the gross pension amount to pay for a spousal survivor benefit for Mary Trice.

The judge made the payments to Dawna that were required under the terms of the stipulation. Beginning on or about October 31, 2014, Dawna began receiving her share of the judge's military pension directly from the military.

Judge Trice's course of conduct with respect to complying with the provisions of the judgment requiring him to pay to his ex-wife the designated portion of his military retirement benefits "as and when received on the following formula" demonstrated a disregard of the command of the judgment and his legal obligation to abide by it. Setting aside a rough approximation based on

incomplete information of the ex-wife's share of the benefit in an account in the judge's name, and under his control, did not reflect a good faith effort to comply with the judgment. Additionally, the advice the judge received from the Air Force, and the opinions he recalls were expressed by Commissioner Perry in response to his hypothetical questions were not based on the complete provision of the facts necessary to obtain a valid legal opinion upon which Judge Trice was entitled to rely.

The information the judge received from the Air Force related solely to an ex-spouse obtaining an order for the Air Force to pay the ex-spouse directly. This was not what the judgment provided for; rather, the judgment required the judge to pay his ex-wife "as and when" he received the benefits. Dawna did not need to apply to the Air Force in order to receive her share of the pension benefits; the judge was obligated to pay her directly under the terms of the judgment.

The opinions the judge asserts that Commissioner Perry expressed in response to his hypothetical questions did not justify the judge's course of conduct. In particular, under the terms of the divorce judgment, the judge's rank at the time of his military retirement was not relevant to the calculation of Dawna's share of his military pension, and there was no need for her to obtain a further court order to obtain her share. If the judge wished to seek a modification of the judgment due to promotions in rank he received post-divorce, then it was incumbent on him to seek a modification order from the court.

Further, the advice the judge received from the Air Force and the opinions he recalls were expressed by Commissioner Perry did not take into account that the judge did not advise his ex-wife he was retired and receiving retirement benefits. Without this information, the judge's ex-wife had no reason to affirmatively seek direct payment from the Air Force or a modification or enforcement order from the court.

The judge's ex-wife's interest in his military pension was not contingent on her requesting it; rather, she was an owner of her community share of the pension,

with a present, existing, and equal interest. (See *Fithian v. Fithian* (1977) 74 Cal.App.3d 397, 403.)

The judge's failure to advise his ex-wife he was retired and receiving the pension benefit, given the terms of the judgment, violated his fiduciary duties to his ex-wife as set forth in Family Code sections 721 and 2102.

Judge Trice's failure to make the pension payments to his ex-wife, Dawna, for nearly two years, and his deliberate failure to inform her that he was retired and receiving his pension, constituted prejudicial misconduct. His conduct violated the Code of Judicial Ethics, canons 1 (a judge shall personally observe high standards of conduct so that the integrity of the judiciary will be preserved); 2 (a judge shall avoid impropriety and the appearance of impropriety); and 2A (a judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary).

Count One B

As discussed above, on May 23, 2014, the judge and Mary Trice participated in a conference call with Dawna's attorney Duenow to discuss a resolution to the pension arrears issue. During the call, Judge Trice made a statement to the effect that the reason he had not made payments to Dawna is that Commissioner Perry had told him it was not his responsibility to initiate payments to her, and that it was Dawna's responsibility to initiate the process to obtain her share of his retirement benefit.

On or around July 15, after he had received and signed the Stipulation Re Payment of Military Benefits Pending Direct Distribution Order, Judge Trice met with Judge Barry LaBarbera in his chambers. Judge Trice informed Judge LaBarbera that he had signed a stipulation to pay pension benefit arrears to his ex-wife pursuant to their dissolution judgment and to arrange for future direct payment from the military. Judge Trice told Judge LaBarbera that he had not paid his ex-wife her share of the retirement benefits based on advice he had received from Commissioner Perry to the effect that it was not his responsibility to initiate

payments to her, and that it was Dawna's responsibility to initiate the process to obtain her share of his retirement benefit. Judge Trice asked Judge LaBarbera if he would handle the stipulation by reviewing and signing it.

On Friday morning, July 18, 2014, Judge Trice called Court Executive Officer Susan Matherly on her cell phone. The purpose of the call was to make arrangements with Matherly to have the settlement stipulation given directly to Judge LaBarbera for judicial approval and his signing.

On July 21, 2014, Matherly spoke with the judge in chambers for about 30-45 minutes. The judge told Matherly that when he retired from the military he had talked to Commissioner Perry about what to do about his pension. The judge said he asked the commissioner, "Do I tell her? Give it to her?" or words to that effect. The judge said the commissioner told him, "You can put it in trust but can't cut her a check because you don't know what the withholdings are," and, "Don't spend it, put it in a trust and wait for her to ask for it," or words to that effect.

The statements the judge made to attorney Duenow, Judge LaBarbera, and CEO Matherly, which the judge attributed to Commissioner Perry, were untrue because they misstated Commissioner Perry's opinions, as described by the judge. Commissioner Perry never told the judge not to pay Dawna her share of the pension benefits. Nor did he tell the judge to put Dawna's share in a trust account and to wait for her to contact him. Dawna was the commissioner's former client, to whom he owed a continuing fiduciary obligation of loyalty and confidentiality. (*Oasis West Realty LLC v. Goldman* (2011) 51 Cal.4th 811, 821.)

The statements Judge Trice attributed to Commissioner Perry implied that Commissioner Perry had given him advice that was contrary to the interests of the commissioner's former client, and contrary to the terms of the Judgment of Dissolution and the MSA. By making these statements to Duenow, Judge LaBarbera, and Matherly, the judge was, intentionally or not, impugning the integrity of Commissioner Perry by asserting that he gave advice that was contrary

to the interests of a former client, about the very matter he represented the former client in, and that was contrary to the terms of a court judgment.

Judge Trice's statements about advice he had received from Commissioner Perry constituted prejudicial misconduct. His conduct violated the Code of Judicial Ethics, canons 1, 2, and 2A. (See *Gonzalez v. Commission on Judicial Performance* (1983) 33 Cal.3d 359, 371 [judge's comments from the bench and in chambers impugning character and competence of judicial colleagues violated canon 2A; *Censure of Judge Jose A. Velasquez* (1997) p. 3 [judge's public statements disparaging judicial colleagues and local attorneys, made both on and off bench, constituted willful misconduct].)

Count One C

As previously discussed, on July 15, 2014, the judge signed two documents in connection with resolving the pension arrears issue with Dawna – a Stipulation Re Payment of Military Benefits Pending Direct Distribution Order, and a Qualifying Court Order re: Military Retirement Benefits. The terms of the stipulation are set forth above on page 10.

On July 15, Judge Trice called Duenow's office and spoke to Duenow's paralegal, Gina Goodwin. The judge informed Goodwin that he had signed the stipulation and that they would receive it shortly. The judge further stated that he had arranged for Judge LaBarbera to sign the stipulation, and that he wanted Duenow's office to submit it through CEO Matherly. The judge and Duenow had not previously discussed or agreed to this arrangement. On July 15, Goodwin prepared a memorandum to Duenow documenting her conversation with the judge, which states:

Judge Trice just called. He says he is going to be busy now, but relayed some info for me to pass along to you. [¶] He is concerned about submitting the document to the Court here. He thinks the Judges will start DQing themselves to keep from signing this doc. He has arranged for Judge LaBarbera to sign off on the document. He would like for us to submit it through

Susan Matherly (court executive officer). She is on vacation until Monday. He has signed the doc and sent it back to us with a check for Dawna enclosed. We should receive it shortly.

During the chambers conference with CEO Matherly on July 21, 2014, the judge told Matherly that he had called her on the previous Friday (July 18) because the parties were stipulating that Judge LaBarbera would sign the stipulation, and he wanted her to process the stipulation.

Matherly subsequently received the stipulation and order from Duenow's office and, pursuant to her conversation with Judge Trice, she left the documents on Judge LaBarbera's desk. Matherly did not discuss the documents with Judge LaBarbera.

On July 28, 2014, Judge LaBarbera signed the stipulation and order. The documents were then returned to Matherly and she had them filed with the court.

As a party to the proceeding, Judge Trice was without authority to determine who would handle the stipulation and order. Even as a judge, Judge Trice had no authority to assign the handling of the stipulation and order he entered into with Dawna to Judge LaBarbera. The authority to assign and reassign cases rests with the presiding judge. (Cal. Rules of Court, rule 10.603(b).) (In July 2014, Judge Dodie Harman was the presiding judge.) Further, Judge Trice was disqualified from presiding over the matter because he had a financial interest in the proceeding and was a party. (Code Civ. Proc., § 170.1(a)(3)(A)&(4).) A judge who is disqualified from a case may take certain limited actions in the case, but those actions do not include assigning the case to another judge. (See, Code Civ. Proc., § 170.4(a).)

In selecting a particular judge to act on the stipulation, Judge Trice was acting beyond the limits of his lawful judicial power and he knew or should have known that he was acting beyond the limits of a judge's authority. In his conversation with Duenow's paralegal, Gina Goodwin, on July 15, 2014, the judge told Goodwin that he had arranged for Judge LaBarbera to sign the stipulation

because he was “concerned” that if the document was submitted to the court, the court’s judges would “start DQing themselves to keep from signing” it. In other words, Judge Trice was motivated by a desire to have the stipulation signed and to avoid the possibility of the court’s judges disqualifying themselves en masse.

By directing who would be assigned to handle the stipulation and order, Judge Trice abused his authority, failed to uphold the integrity of the judiciary (canon 1), failed to avoid impropriety and the appearance of impropriety (canon 2), failed to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary (canon 2A), and used his judicial position to advance his personal interests (canon 2B(2)). Moreover, because the judge was acting in his judicial capacity when he directed CEO Matherly to submit the stipulation and order to Judge LaBarbera his conduct constituted willful misconduct.

Count Two A

On May 1, 2013, Judge Harman, who was the assistant presiding judge and supervising judge of the criminal team, which included Judge Trice, was looking for Judge Trice to discuss coverage of the next day’s calendars. Judge Harman learned from the judicial secretary that Judge Trice had left for the day.

At 5:12 p.m., Judge Harman sent an email to Judge Trice. Before sending the email she spoke with Judge LaBarbera, who was the presiding judge, about Judge Trice leaving the courthouse earlier that afternoon. Judge LaBarbera directed her to inquire about Judge Trice’s whereabouts that afternoon, as was her duty as a supervising judge, and reviewed and approved the following email, which Judge Harman drafted. Judge Harman sent this email to Judge Trice at 5:12 p.m.:

I was trying to find you this afternoon to talk about tomorrow's calendars. I may need to get some help from you and wanted to see if you could help out. I was told you had left for the day so I was just wondering where you were because you did not check

with me if we were covered before you left. If you could let me know where you were and if you are available to help with calendars tomorrow I would appreciate it.

Thanks, Dodie

That evening at 9:34 p.m., Judge Trice responded to Judge Harman with the following email, which he copied to the CEO Susan Matherly, and three of the court's judges, Judges LaBarbera, Charles Crandall, and Michael Duffy:

Dear Ms. Assistant Presiding Judge and
Criminal Team "Supervising Judge" –

As I told you last week, we have Veteran's
Treatment Court meetings every Wednesday
until kick-off on June 14th.

I can't help tomorrow.

I handled my calendar today, D10's morning
calendar today, D10s 2960 calendar today with
two court trials and 3 search warrants. Then I
went to the Vet's Hall for the meeting, which
turns out – he cancelled, so I talked with the
V.A. rep for about an hour and came home. I
just got done handling an after hours search
warrant and a 20 page Pen Register Request.
I'm sure you are just as busy with your physical
therapy, workout time and all.

I don't appreciate you checking on me – I don't
work for you and never will. I was elected by
the citizens of this county, unlike you. I would
hope you and your pals upstairs would have
better things to do with your time as Superior
Court Judges than keep a journal on another
Judge's comings and goings.

Pathetic. . . . get a life. I look forward to
running against you for P.J. The Court will be a
lot better off without you in some position of
assumed power. Good luck in the campaign.

Have a really nice night.

My civil attorneys say I should have no more contact with you or [Judge] Tangeman without an impartial witness or reporter present. I plan to take their advice.

Sincerely,

John A. Trice, Judge
San Luis Obispo Superior Court

As supervising judge of the criminal team, Judge Harman was responsible for ensuring that there was judicial coverage for all of the criminal court calendars. Consistent with that responsibility, Judge Harman's May 1, 2013 email to Judge Trice advised him that she had been looking for him that afternoon to talk about the next day's calendars, asked where he had been that afternoon since he did not check with her before leaving, and asked if he would be available to help with the next day's calendars.

Judge Trice's email response to Judge Harman included comments that were disparaging ("I was elected by the citizens of our county, unlike you"), and comments that were undignified and discourteous ("Pathetic ... get a life," "The Court will be better off without you in some position of assumed power"). Judge Trice also implied that he would not speak to Judge Harman without a "witness or reporter" present.

Judge Trice's conduct violated canons 1, 2A, 3B(4), and 3C(2) (a judge shall cooperate with other judges and court officials in the administration of court business).

At a minimum, the judge's conduct constituted improper action.

Count Two B

The San Luis Obispo County Superior Court employs nine court reporters who work for the court under the supervision of Tammy Denchfield, Director of Court Operations. At a judges' meeting on October, 3, 2014, the judges had

agreed to continue a policy and practice that the nine court reporters would be randomly rotated and assigned to a judge for an eight-week period, this despite some of the judges complaining about having to work with court reporter Claire Trout.

On October 30, 2014, the court was scheduled for the next court reporter rotation (two months), effective November-December 2014. Tammy Denchfield was responsible for preparing the rotation and sending it out to the judges and court staff. Her office was sending the rotation out that afternoon.

Before sending the rotation schedule out, Denchfield addressed Judge Trice's request to keep court reporter Lisa Andrews, who was then assigned to his department, with Presiding Judge Harman. Judge Harman told Denchfield to do what she needed to do. Denchfield then directed Anna Hernandez, the supervising court reporter, to send the rotation out. Denchfield left for the day, around 4:30 p.m., her normal work schedule, and was starting a vacation leave the next day.

When Denchfield arrived home at 5:00 p.m. she received the following email from Judge Trice on her iPad:

Tammy – I was notified that Claire Trout has been re-assigned to our courtroom. I will not work with her. She has been rude to my other staff, the public and attorneys assigned to our court. We have several high profile, high stress cases coming up on our calendar, we cannot have such a person with us when trying to serve the public.

At 5:04 p.m. Denchfield forwarded the email to Susan Matherly.

At 5:05 p.m., Matherly forwarded the email to Judge Harman.

The next day, October 31, at 8:14 a.m., Judge Harman responded to Matherly by email:

Susan:

I believe rotations should be the same for everybody. The same issues have been raised by a number of judges. Bottom line is if she does something then it

should be reported by him and dealt with by her supervisor. None of us have been able to exclude a

particular reporter from our courtroom. The problem should be dealt with if there is one instead of saying particular judges refuse particular reporters.

At 8:31 a.m., Matherly responded to Judge Trice by email, as follows:

The first thing you should realize is that this is a labor issue. The rotations are part of a labor agreement between the court and SEIU. I believe rotations should be the same for everybody. As you may recall, the same issues have been raised by a number of judges at our most recent judges' meeting and it was agreed that if she does something it should be reported to her supervisor so we can deal with the behavior. None of the judges have been able to exclude a particular reporter from their courtrooms. The problem should be dealt with if there is one instead of saying particular judges can refuse particular reporters. The process should be fair to both the other judges and the reporters. I am happy to sit down and discuss this with you at your convenience.

At 8:47 a.m. on October 31, Judge Trice responded to Matherly by email as follows:

I will not work with her. This has been a stressful year for Frances and I and we don't need to add more tension in our courtroom. If Chris Money, Barry [LaBarbera], Dodie [Harman] or Jeff Burke didn't want a bailiff or employee in their courtroom for a good reason, they were always moved. I will be given the same consideration. One male bailiff was moved completely out of this building a few years ago based on personal conflict with a female judge. Linda Hurst routinely refuses to accept certain personnel in her courtroom. I will be given the same consideration.

Our department has always gone the extra mile to help out this court. We have a "well-oiled", efficient department.

She either moves, or the P.J. can move me and my staff. I will not call my calendar on Tuesday with her in the courtroom. I will order her out of the room in public view.

If there is still resistance to this, I would like a special Judge's meeting to be scheduled before Tuesday.

At 9:28 a.m., Matherly sent the judge the following email:

I'm sorry but we cannot make an exception to the court reporter rotation policy.

At 9:36 a.m., the judge responded:

Please schedule a special Judge's meeting.

On November 1, 2014, the judge sent Matherly the following email:

I don't need a meeting. I'll suck it up for 8 weeks. [¶] Sorry for any stress this caused you.

Judge Trice may have had legitimate concerns about court reporter Trout, who had just been assigned to his courtroom. However, his concerns about Trout were based on conduct that had occurred in the past, and that predated the October 3, 2014 judges meeting at which all of the judges agreed that Trout would be rotated through every department. Further, the assignment of courtroom staff is not a matter within the judge's purview. Judge Trice's statement to CEO Matherly that he would refuse to call his calendar if Trout was in the courtroom, and to "order her out of the room in public view," was intemperate, and inconsistent with his obligation to cooperate with court officials in the administration of court business.

The judge's conduct violated canons 1, 2A, 3B(4), 3C(1) (a judge shall not, in the performance of administrative duties, engage in speech, gestures, or other conduct that would reasonably be perceived as bias or prejudice), and 3C(2).

At a minimum, the judge's conduct constituted improper action.

Count Three

Judge Trice and criminal defense attorney David Hurst are close personal friends. The judge and Hurst became friends while they were both employed by the San Luis Obispo County District Attorney's Office in the 1980's. While with the DA's office, they socialized often, including playing golf together and occasionally taking vacations together. Hurst left the DA's office in 1996 and went into private practice. Since then, Hurst and the judge have continued their friendship. Hurst considers the judge one of his four "best friends." Hurst has been to the judge's house at least 20 times. They watch sports events together and Hurst typically goes to the judge's house on Thanksgiving. They socialize together outside of work approximately once a month. In 2014, when Hurst was suffering from a knee injury that made it difficult for him to drive his manual transmission Porsche automobile, he traded cars with the judge's wife at her suggestion. While the trade was in place, the judge on approximately four occasions drove Hurst's Porsche to work and parked it in the judges' parking lot.

Since the judge took the bench in 2003, Hurst has frequently appeared in his court representing criminal defendants. The judge does not disqualify himself in cases in which Hurst appears as counsel of record, nor does he disclose on the record the fact or nature of his relationship with Hurst.

Judge Trice's position is that he is not disqualified from handling cases in which Hurst represents a defendant, and that he need not disclose his personal relationship with Hurst because the opposing representative in all of his criminal cases are 20-year veterans of the district attorney's office who are aware of his relationship with Hurst, and who have never raised any concern of personal bias or prejudice, or the appearance of impropriety because of the relationship.

Under canon 3E(1), a judge is obligated to disqualify himself or herself in any proceeding in which disqualification is required by law. The circumstances under which a trial court judge is disqualified are set forth in Code of Civil Procedure section 170.1. Judge Trice's close friendship with Hurst would

arguably appear to be a disqualifying circumstance under section 170.1(a)(6)(A)(iii), which provides that a judge shall be disqualified if “[a] person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial.”

Even if the judge’s friendship with Hurst did not require his disqualification, the judge nevertheless had an obligation to disclose their relationship on the record. Canon 3E(2)(a) provides that in all trial court proceedings, a judge shall disclose on the record “information that is reasonably relevant to the question of disqualification under Code of Civil Procedure section 170.1, even if the judge believes there is no actual basis for disqualification.”

At a minimum, the judge’s conduct violated canon 3E(2) and constituted improper action.

Prior Discipline

In 2012, Judge Trice received an advisory letter for continuing to preside over matters in a case after “voluntarily recusing” from a new trial motion.

Aggravating or Mitigating Factors

Judge Trice enlisted in the U.S. Air Force in 1972. He served eight years active duty, and thereafter 18 years in the Reserves. He was promoted to the rank of Lieutenant Colonel in 1997. He was awarded three Air Force Meritorious Service Medals during his military service.

Judge Trice worked for the San Luis Obispo County District Attorney’s Office from 1984 through 2002. He was selected to serve as that office’s first Felony Trial Team Leader in 1988. He handled over 140 jury trials and successfully prosecuted two of the county’s four death penalty cases. Additionally, he served on the Governor’s Arson Task Force.

In 2003, he started the county’s first Mental Health Treatment Court, and in 2013 started the county’s first Veteran’s Treatment Court.

Count 2A

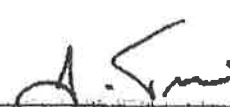
Judge Trice acknowledges that his conduct in stating that he would not call his calendar, and would order the court reporter out of the room in public view was both improper and intemperate. In mitigation, the evidence shows that he relented and apologized less than 24 hours after the inappropriate email: "I don't need a meeting. I'll suck it up for 8 weeks. Sorry for any stress this caused you."

Count 3

Judge Trice believed that disclosure of his friendship with Mr. Hurst was not required because the deputy district attorneys in his court had actual knowledge of his long friendship with Mr. Hurst. Upon reflection, Judge Trice now appreciates that a formal disclosure to all parties, including defendants, was the required course of conduct. He will make formal disclosure in the future.

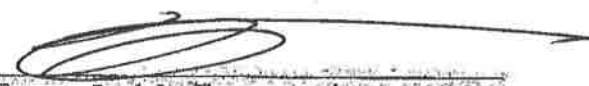
By signing this stipulation, in addition to consenting to discipline on the terms set forth, Judge Trice expressly admits that the foregoing facts are true and that he agrees with the stated legal conclusions.

Dated: 1/22, 2016



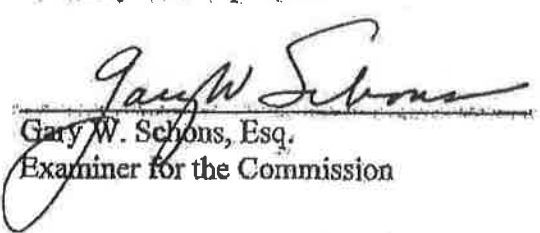
Judge John A. Trice
Respondent

Dated: 22 January, 2016



Eugene Iredale, Esq.
Attorney for Respondent

Dated: January 25, 2016



Gary W. Schons, Esq.
Examiner for the Commission

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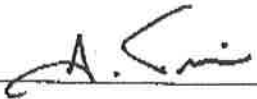
STATE OF CALIFORNIA
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

INQUIRY CONCERNING JUDGE | AFFIDAVIT OF CONSENT
JOHN A. TRICE, | FOR DISCIPLINE
No. 196

Pursuant to Rules of the Commission on Judicial Performance, rule 127(d), Judge John A. Trice submits the following affidavit of consent in Inquiry No. 196:

1. I consent to a public censure, as set forth in the Stipulation for Discipline by Consent.
2. My consent is freely and voluntarily rendered.
3. I admit the truth of the charges as modified by the Stipulation for Discipline by Consent.
4. I waive review by the Supreme Court.

I declare under penalty of perjury that the foregoing is true and correct.
Executed this 22 day of January, 2016.



Judge John A. Trice
Respondent